REMARKS

[0003]   Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-40 are presently pending. Claims amended herein are: 1-29, 33-38. Claims withdrawn or cancelled herein are: None. New claims added herein are: None.

Statement of Substance of Telephone Interview

[0004]   Examiner Khakhar graciously talked with me—the undersigned representative for the Applicant on 11 June 2008. Applicant greatly appreciates the Examiner's willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

[0005]   During the interview, we discussed proposed amendments to overcome the 101 rejection and the Examiner agreed to remove the 101 rejection upon formal submission of the proposed amendments. We also discussed how the claims differ from the cited reference, namely Caswell. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

[0006]   The Examiner was receptive to the proposals, specifically the clarifications regarding definitions and behavior. However, the Examiner indicated that he would need to further review the cited art, and requested that the proposed amendments be presented in writing.

lee&hayes   The Business of IP™
www.leehayes.com   509 324 9256

[0007]   Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited art of record for at least the reasons discussed during the interview.

Formal Request for an Interview

[0008]   If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can discuss this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0009]   Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your telephone call as well. My contact information may be found on the last page of this response.

Claim Amendments

[0010]   Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1-29, 33-38 herein. Applicant amends claims to clarify claimed features.   Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited reference.

Serial No.: 10/693,004
Atty Docket No.: MS1 -1776US   -17-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509 324 9256

Expectation that the Next Action will not be Final

[0011]   Applicant submits that all pending claims are in condition for allowance. If the examiner feels otherwise and believes that another action on the merits is necessary, then Applicant expects such an action would be Non-Final.

[0012]   According to 37 CFR § 1.113 and MPEP 706.07, the "examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." "The invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied."

[0013]   In accordance with 37 CFR § 1.113 and MPEP 706.07(a), Applicant respectfully submits that finality would be premature for the next action for the following reasons:

- The Applicant took no action (e.g., amendment or filing of an IDS with a fee) herein that necessitates that the Examiner perform a new search or introduce a new ground of rejection;

No Action necessitating new grounds for rejection or new search

[0014]   Herein, Applicant does not and has not substantively amended independent claims 33, 34, and 38. Consequently, one or more claims presented herein have already been examined in the Office Action. Furthermore, Applicant

explains herein why these already-examined claims differ from the cited art of record. Therefore, in accordance with 37 CFR § 1.113 and MPEP 706.07(a), finality for the next action would be premature.

Substantive Matters

Claim Rejections under § 101

[0015]   Claims 1-16 and 23-27 are rejected under 35 U.S.C. § 101. Applicant respectfully traverses this rejection.   Furthermore, in light of the amendments presented herein, Applicant respectfully submits that these claims comply with the patentability requirements of §101 and that the §101 rejections should be withdrawn.   Applicant further asserts that these claims are allowable. Accordingly, Applicant asks the Examiner to withdraw these rejections.

[0016]   If the Examiner maintains the rejection of these claims, then Applicant requests additional guidance as to what is necessary to overcome the rejection.

Claim Rejections under § 102

[0017]   The Examiner rejects claims 1-40 under § 102. For the reasons set forth below, the Examiner has not shown that the cited reference anticipates the rejected claims.

[0018]   Accordingly, Applicant respectfully requests that the § 102 rejections be withdrawn and the case be passed along to issuance.

[0019]   The Examiner's rejections are based upon **Caswell:** *Caswell, et al.,* US Patent No. 6,336,138 (issued January 1, 2002).

Serial No.: 10/693,004
Atty Docket No.: MS1 -1776US   -20-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509.324.9256

Overview of the Application

[0020]   The Application describes a technology for designing, deploying and managing distributed applications within a distributed computing system.

Cited Reference

[0021]   Caswell describes a technology for modeling a selected service within a network environment.

Anticipation Rejections

[0022]   Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.[1] Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.[2]

Based upon Caswell

[0023]   The Examiner rejects claims 1-40 under 35 U.S.C. § 102(b) as being anticipated by Caswell. Applicant respectfully traverses the rejection of these claims. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejection of these claims.

Independent Claim 1

[0024]   Applicant submits that Caswell does not anticipate this claim because it does not disclose the following elements as recited in this claim, as amended (with emphasis added):

- "at least one definition of **entities to be implemented in a distributed-computing system**"

---

[1] "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); also see MPEP §2131.

[2] See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Serial No.: 10/693,004
Atty Docket No.: MS1 -1776US   -22-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509.324.9256

- at least one relationship that identifies links between the **entities to be implemented in the distributed-computing system**,"
- "such that the schema is used by **a development tool** and a **deployment tool** to implement the definition and the relationship"

[0025]   The Examiner indicates that Caswell col. 5, ll 49-52 discloses the features of claim 1. Caswell discloses "Network Nodes" connected together by a network. Caswell describes the nodes as hosts, servers, network links, and services. Caswell discloses multiple computing systems distributed across a network; he does not disclose a "distributed-computing system" at the cited location or at any other location in the reference. Independent computing systems distributed over a network are not equivalent to a distributed-computing system as recited in claim 1. Page 16 of the instant application describes a distributed-computing system as "...a set of related software and/or hardware resources that work together to accomplish a common function. The systems disclosed by Caswell are intra-dependent, individual systems as they are not designed to work together to accomplish a common function.

[0026]   Furthermore, The Examiner cites col. 5, ll 49-52 as disclosing:

. . .wherein the schema is used by a development tool and a deployment tool

[0027]   In contrast, the Caswell citation describes the defining of network links. Caswell does not disclose the use of a schema by a development tool as recited in claim 1.

Serial No.: 10/693,004
Atty Docket No.: MS1 -1776US
Atty/Agent: Clay D. Hagler
-23-
lee&hayes   The Business of IP™
www.leehayes.com   509.324.9256

[0028]   Consequently, Caswell does not disclose all of the elements and features of claim 1. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 2-16

[0029]   These claims ultimately depend upon independent claim 1.   As discussed above, claim 1 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 17

[0030]   Applicant submits that Caswell does not anticipate this claim because it does not disclose the following elements as recited in this claim (with emphasis added):

- "at least one system definition of a portion of **an application associated with a distributed-computing system**"
- at least **one resource definition that specifies application runtime behavior** associated with the system,"
- "at least **one endpoint definition of communication information** associated with the system"

Serial No.: 10/693,004
Atty Docket No.: MS1-1776US   -24-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509.324.9256

[0031]   As described above with reference to claim 1, Caswell does not disclose a distributed-computing system, which is also recited in claim 17.

[0032]   Furthermore, the Examiner indicates that Caswell col. 6, lines 53-59; col.5, lines 57-62 and col. 19, lines 11-31 disclose the features of claim 17. Applicant respectfully disagrees. At [col. 6, lines 53-59], Caswell describes the inspection of nodes in a network in order to determine what resources are being requested and serviced. Caswell does not disclose at least one system definition of a portion of "an application associated with a distributed-computing system" as recited in claim 17.   Caswell's discovery is a collection of discovered information; without any definitive nature as opposed to the definitive "one system definition" recited in claim 17.

[0033]   Additionally, the Examiner cites Caswell col. 5, line 57-62 as disclosing:

> "at least one resource definition that describes a behavior associated with the system."

Applicant respectfully disagrees. In contrast, Caswell describes a template of system resource states for the purpose of detecting undesired resource states. A system state is not equivalent to system behavior.

[0034]   Finally, the Examiner cites Caswell col 19, lines 11-31 as disclosing:

at least one endpoint definition that describes communication information associated with the system.

Applicant respectfully disagrees. In contrast, Caswell describes the inspection and parsing of network traffic. Observation of a thing does not necessarily produce a definition of the thing. For example, observing a printed word may yield its usage, its spelling, its grammar, etc., yet does not yield its definition. Similarly, inspection of network packets, while yielding information regarding a node and its communication patterns, is not equivalent to an endpoint definition. Therefore, Caswell's disclosure of packet inspection does not infer or imply an "at least one endpoint definition" as recited in claim 17.

[0035]   Consequently, Caswell does not disclose all of the elements and features of claim 17. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 18-22

[0036]   These claims ultimately depend upon independent claim 17. As discussed above, claim 17 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

<u>Independent Claim 23</u>

[0037]   Claim 23 recites elements that are similar to those recited in claim 1, and is allowable for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed-computing system.

[0038]   Furthermore, the Examiner cites Caswell col. 5 lines 37-44 as disclosing the following feature as recited in claim 23:

> a system definition model to enable abstract description of distributed computing systems and distributed applications

Applicant respectfully disagrees. Caswell discloses the modeling of a network based upon data collected from the network from application agents and network packet inspection. A model built in such a way is not definitive as it relies only on data collected up to a moment in time. A model built in such a way is also not abstract as it is constructed wholly from concrete data. Therefore Caswell does not disclose a system **definition** model to enable **abstract** description of **distributed-computing** systems and distributed applications.

[0039]   Additionally, Examiner cites Caswell col. 5, line 57-62 as disclosing:

> "at least one resource definition that describes a behavior associated with the system."

Applicant respectfully disagrees. Caswell describes a template of system resource states for the purpose of detecting undesired resource states. A system state is not equivalent to system behavior.

Serial No.: 10/693,004
Atty Docket No.: MS1 -1776US   -27-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509.324.9256

[0040]   Finally, the Examiner cites Caswell col.5, lines 49-52 as disclosing:

> a schema to dictate how functional operations within the system definition model are to be specified

Applicant respectfully disagrees. Caswell describes "the template defines nodes of various types." First, Caswell discloses herein a template, while the claim recites a schema. These two concepts are not equivalent. Second, while Caswell "defines nodes" it does not dictate **how** functional operations are to be specified

[0041]   Consequently, Caswell does not disclose all of the elements and features of claim 23. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 24-27

[0042]   These claims ultimately depend upon independent claim 23.   As discussed above, claim 23 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Serial No.: 10/693,004
Atty Docket Nos.: MS1 -1776US   -28-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509 324 9256

[0043]   Claim 28 recites elements that are similar to those recited in claim 1, and is allowable for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed application.

[0044]   Furthermore, the Examiner cites Caswell col. 5 lines 57-62 as disclosing the following feature as recited in claim 28:

> At least one resource definition that describes behavior associated with the component

Applicant respectfully disagrees. First Caswell discloses the definition of nodes and does not disclose the definition of a resource as recited in claim 28. Second, Caswell describes a template of system resource states for the purpose of detecting undesired resource states. A state is not equivalent to a behavior as recited in claim 28.

[0045]   The   Examiner further cites Caswell col 19, lines 11-31 as disclosing:

> at least one endpoint definition that describes communication information associated with the component.

Applicant respectfully disagrees. Caswell describes the inspection and parsing of network traffic. As discussed above, observation of a thing does not necessarily produce the definition of a thing. Observing a printed word may yield its usage, its spelling, its grammar, etc., yet does not yield its definition. Similarly, inspection of network packets, while yielding information regarding a component

and its communication patterns, is not equivalent to an endpoint definition as recited in claim 28. Therefore, Caswell's disclosure of packet inspection does not infer or imply an "at least one endpoint definition" as recited in claim 28.

[0046]   Finally, the Examiner cites Caswell col.5, lines 49-52 as disclosing:

> At least one containment relationship that describes the ability of a particular definition to contain members of other definitions

Caswell describes "the template defines nodes of various types." Caswell does not disclose in the cited passage or at any other location a "containment relationship" or "the ability of a particular definition to contain members of other definitions".

[0047]   Consequently, Caswell does not disclose all of the elements and features of claim 28. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 29-32

[0048]   These claims ultimately depend upon independent claim 28.   As discussed above, claim 28 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

[0049]   Claim 33 recites elements that are similar to those recited in claim 1, and is allowable for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed application.

[0050]   Furthermore, the Examiner cites Caswell col. 5 lines 49-52 as disclosing the following features as recited in claim 33:

> A containment relationship that describes the ability of a particular definition to contain members of other definitions

> A delegation relationship that exposes members contained in the particular definition

Caswell describes "the template defines nodes of various types." Caswell does not disclose in the cited passage or at any other location a containment relationship or ability of a particular definition to contain members of other definitions or a delegation relationship or exposing definition members as is recited in this claim.

[0051]   Additionally, the Examiner cites Caswell col.5, lines 53-57 as disclosing:

> At least one hosting relationship that identifies ordering relationships between the plurality of definitions

Caswell describes "dependence between nodes." Caswell's disclosure is directed to surveying an installed implementation and instrumentation its operations.

Caswell does not disclose, in the cited passage or at any other location, a "hosting relationship that identifies ordering relationships between the plurality of **definitions**".

[0052]   Consequently, Caswell does not disclose all of the elements and features of claim 33. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claim 34

[0053]   Claim 34 recites elements that are similar to those recited in claim 1, and is allowable for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed application.

[0054]   Furthermore, the Examiner cites Caswell col. 5 lines 49-52 as disclosing the following feature as recited in claim 34:

> loading a relationship that identifies communication links between the entities in the distributed computing system, wherein the definition and relationship data is used during development and deployment of the distributed computing system

Applicant respectfully disagrees.   In the cited passage Caswell discloses a template that defines nodes of various types.   Caswell does not disclose a "relationship that identifies communication links". Furthermore, Caswell does not disclose the use of a definition or relationship during development and deployment of a distributed computing system. Caswell only describes monitoring and managing network nodes.

Serial No.: 10/693,004
Atty Docket Nos.: MS1 -1776US
Atty/Agent: Clay D. Hagler
-32-
lee&hayes   The Business of IP™
www.leehayes.com   509.324.9256

[0055]   Consequently, Caswell does not disclose all of the elements and features of claim 34. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 35-37

[0056]   These claims ultimately depend upon independent claim 34. As discussed above, claim 34 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally, some or all of these claims may also be allowable for additional independent reasons.

Independent Claim 38

[0057]   Claim 38 recites elements that are similar to those recited in claim 34. Namely, Caswell does not disclose a distributed application.   Accordingly, Applicant submits that claim 38 is allowable at least for reasons similar to those presented above with reference to claim 34, and Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 39-40

[0058]   These claims ultimately depend upon independent claim 38. As discussed above, claim 38 is allowable.   It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable.   Additionally,
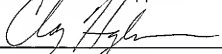
some or all of these claims may also be allowable for additional independent reasons.

Conclusion

[0059]   All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application.   If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action**.   Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

_____   Dated: 06/12/2008

Clay D. Hagler (clay@leehayes.com; x223)
Registration No. 61804
Kayla D. Brant (kayla@leehayes.com; x242)
Registration No. 46576

Customer No. **22801**

Telephone: (509) 324-9256
Facsimile: (509) 323-8979
www.leehayes.com

Serial No.: 10/693,004
Atty Docket No.: MS1-1776US   -34-   lee&hayes   The Business of IP™
Atty/Agent: Clay D. Hagler   www.leehayes.com   509 324 9256